

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 11-0416 JB/SMV

MARK HOPKINS; SHARON HOPKINS;
HOUSE OF ROYALE, INC.; SHALOM
ENTERPRISES, INC.; VICKI L. ASHCRAFT and
SUSAN G. SHADIX as trustees for GRACE
TRUST; ADVANCED ELECTRONICS; STATE
OF NEW MEXICO REVENUE DEPARTMENT;
and BAYVIEW LOAN SERVICING, LLC,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendants' Conditional Motion to Continue Trial Date in Order to Resolve Discovery Compliance Issue, filed Jan. 16, 2013 (Doc. 151)(“Motion to Continue”). The primary issue is whether the Court should vacate the trial, which is set for February 11, 2013. Because Plaintiff United States of America, and Defendants Mark Hopkins and Sharon Hopkins, all agree that the trial should be continued, although for different reasons, the Court will grant the motion to continue the trial, but not because of the reasons set forth in the Motion, and will not reset it at this time. The Court will also vacate the pretrial conference, set for January 24, 2013.

PROCEDURAL BACKGROUND

The Hopkins ask the Court to consider their motion to continue as conditional. See Motion to Continue at 1. The Hopkins state that, if the United States complies with their discovery requests, then the continuance will be unnecessary; however, if the United States continues to refuse to

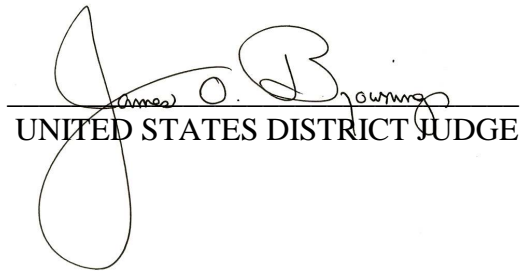
comply with the Hopkins' discovery, the Hopkins state that they will file another motion to compel discovery and ask for sanctions. See Motion to Continue at 1-2. It is the Court's understanding that discovery disputes remain, and that these disputes are before the Magistrate Judge and/or on appeal to this Court.

The Court instructed its Courtroom Deputy Clerk to contact Manuel Lena, the attorney for the United States, to see if he opposes the Motion to Continue. Mr. Lena stated that he is in the process of drafting a response. Mr. Lena agrees that the Court should continue the trial date, but for different reasons than those the Hopkins states in their motion.

ANALYSIS

The parties to the trial -- the United States and the Hopkins -- agree that the Court should continue the trial, although their reasons differ. The Court agrees that it should vacate the trial, because, at the present time, it is working on a memorandum opinion and order addressing the United States' Motion for Summary Judgment, filed July 16, 2012 (Doc. 66). While the Court has more work to do on the Motion for Summary Judgment, it is presently inclined to grant the United States' motion. Accordingly, at the present time, there does not appear to be a need for a trial, and it appears that there will not be a trial. There is no sound reason for the parties or for the Court to work on trial preparation if there is not going to be a trial.

IT IS ORDERED that the Defendants Mark Hopkins and Sharon Hopkins' Conditional Motion to Continue Trial Date in Order to Resolve Discovery Compliance Issues, filed Jan. 16, 2012 (Doc. 151) is granted in part. The Court will vacate the February 11, 2013, trial date and the pretrial conference set for January 24, 2013, but not necessarily for the reasons set forth in the Hopkins' motion.



UNITED STATES DISTRICT JUDGE

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